

House Study Bill 96

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the possession, distribution, and reporting of
2 obscene material and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1370DP 83
5 jm/rj/14

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1 1 Section 1. Section 728.1, subsection 3, Code 2009, is
1 2 amended to read as follows;
1 3 3. "Material" means any book, magazine, newspaper or other
1 4 printed or written material or any picture, drawing,
1 5 photograph, motion picture, or other pictorial representation
1 6 or any statue or other figure, or any recording, transcription
1 7 or mechanical, chemical or electrical reproduction, or any
1 8 live transmission, or any other articles, equipment, machines
1 9 or materials.
1 10 Sec. 2. Section 728.1, subsection 7, paragraphs e and g,
1 11 Code 2009, are amended to read as follows:
1 12 e. Sadomasochistic abuse of a minor for the purpose of
1 13 arousing or satisfying the sexual desires of a person who may
1 14 view a visual depiction of the abuse.
1 15 g. Nudity of a minor for the purpose of arousing or
1 16 satisfying the sexual desires of a person who may view a
1 17 visual depiction of the nude minor.
1 18 Sec. 3. Section 728.1, Code 2009, is amended by adding the
1 19 following new subsection:
1 20 NEW SUBSECTION. 11. "Visual depiction" means but is not
1 21 limited to any picture, slide, photograph, digital or
1 22 electronic image, negative image, undeveloped film, motion
1 23 picture, videotape, digital or electronic recording, live
1 24 transmission, or other pictorial or three-dimensional
1 25 representation.
1 26 Sec. 4. Section 728.12, subsection 1, Code 2009, is
1 27 amended to read as follows:
1 28 1. It shall be unlawful to employ, use, persuade, induce,
1 29 entice, coerce, solicit, knowingly permit, or otherwise cause
1 30 or attempt to cause a minor to engage in a prohibited sexual
1 31 act or in the simulation of a prohibited sexual act. A person
1 32 must know, or have reason to know, or intend that the act or
1 33 simulated act may be photographed, filmed, or otherwise
1 34 preserved in a ~~negative, slide, book, magazine, computer,~~
1 35 ~~computer disk, or other print or visual medium, or be~~
2 1 ~~preserved in an electronic, magnetic, or optical storage~~
2 2 ~~system, or in any other type of storage system~~ visual
2 3 depiction. A person who commits a violation of this
2 4 subsection commits a class "C" felony. Notwithstanding
2 5 section 902.9, the court may assess a fine of not more than
2 6 fifty thousand dollars for each offense under this subsection
2 7 in addition to imposing any other authorized sentence.
2 8 Sec. 5. Section 728.12, subsection 3, unnumbered paragraph
2 9 1, Code 2009, is amended to read as follows:
2 10 It shall be unlawful to knowingly purchase or possess a
2 11 ~~negative, slide, book, magazine, computer, computer disk, or~~
2 12 ~~other print or visual medium, or an electronic, magnetic, or~~
2 13 ~~optical storage system, or any other type of storage system~~
2 14 ~~which depicts~~ visual depiction of a minor engaging in a
2 15 prohibited sexual act or the simulation of a prohibited sexual
2 16 act. A person who commits a violation of this subsection
2 17 commits an aggravated misdemeanor for a first offense and a
2 18 class "D" felony for a second or subsequent offense. For
2 19 purposes of this subsection, an offense is considered a second

2 20 or subsequent offense if, prior to the person's having been
2 21 convicted under this subsection, any of the following apply:
2 22 Sec. 6. Section 728.14, subsections 1 and 2, Code 2009,
2 23 are amended to read as follows:
2 24 1. A commercial film and photographic print processor who
2 25 has knowledge of or observes, within the scope of the
2 26 processor's professional capacity or employment, a ~~film,~~
2 27 ~~photograph, video tape, negative, or slide which depicts~~
2 28 visual depiction of a minor whom the processor knows or
2 29 reasonably should know to be under the age of eighteen,
2 30 engaged in a prohibited sexual act or in the simulation of a
2 31 prohibited sexual act, shall report the visual depiction to
2 32 the county attorney immediately or as soon as possible as
2 33 required in this section. The processor shall not report to
2 34 the county attorney visual depictions involving mere nudity of
2 35 the minor, but shall report visual depictions involving a
3 1 prohibited sexual act. This section shall not be construed to
3 2 require a processor to review all ~~films, photographs, video~~
3 3 ~~tapes, negatives, or slides~~ visual depictions delivered to the
3 4 processor within the processor's professional capacity or
3 5 employment.

3 6 2. For purposes of this section, "prohibited sexual act"
3 7 means any of the following:

- 3 8 a. A sex act as defined in section 702.17.
3 9 b. An act of bestiality involving a minor.
3 10 c. Fondling or touching the pubes or genitals of a minor
3 11 for the purpose of arousing or satisfying the sexual desires
3 12 of a person who may view a visual depiction of the act.
3 13 d. Fondling or touching the pubes or genitals of a person
3 14 by a minor for the purpose of arousing or satisfying the
3 15 sexual desires of a person who may view a visual depiction of
3 16 the act.
3 17 e. Sadomasochistic abuse of a minor for the purpose of
3 18 arousing or satisfying the sexual desires of a person who may
3 19 view a visual depiction of the abuse.
3 20 f. Sadomasochistic abuse of a person by a minor for the
3 21 purpose of arousing or satisfying the sexual desires of a
3 22 person who may view a visual depiction of the abuse.
3 23 g. Nudity of a minor for the purpose of arousing or
3 24 satisfying the sexual desires of a person who may view a
3 25 visual depiction of the nude minor.
3 26 2- 3. A person who violates this section is guilty of a
3 27 simple misdemeanor.

3 28 EXPLANATION

3 29 This bill relates to the possession or distribution of
3 30 obscene material.

3 31 The bill modifies the definition of "material" in Code
3 32 chapter 728 to include live transmissions.

3 33 Under the bill, the modification of the definition of the
3 34 term "material" results in changes to the elements of the
3 35 following criminal offenses within Code chapter 728:

- 4 1 dissemination of obscene material to minors (Code section
4 2 728.2), admitting minors to premises where obscene material is
4 3 exhibited (Code section 728.3), rental or sale of hard-core
4 4 pornography (Code section 728.4), sexual exploitation of a
4 5 minor (Code section 728.12(2)), and telephone dissemination of
4 6 obscene material (Code section 728.15).

4 7 The bill also defines the term "visual depiction" within
4 8 Code chapter 728 to include any picture, slide, photograph,
4 9 digital or electronic image, negative image, undeveloped film,
4 10 motion picture, videotape, digital or electronic recording,
4 11 live transmission, or other pictorial or three-dimensional
4 12 representation.

4 13 The changes in the bill to the criminal offense of sexual
4 14 exploitation of a minor in Code section 728.12(3) are in
4 15 response to the State v. Muhlenbruch, 728 N.W.2d 212 (Iowa
4 16 2007).

4 17 The bill modifies the elements of the criminal offense of
4 18 sexual exploitation of a minor in Code section 728.12(3) by
4 19 substituting references for a computer and other types of
4 20 storage systems with the term "visual depiction" as defined by
4 21 the bill. The bill also substitutes "visual depiction" for
4 22 storage systems referenced in Code sections 728.12(1) and
4 23 728.14 to conform with the sexual exploitation of a minor
4 24 changes in Code section 728.12(3) due to the Muhlenbruch case.

4 25 In addition, the word "visual" is added before the word
4 26 "depiction" throughout Code chapter 728 to conform with the
4 27 changes made by the bill.